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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,270	04/09/2004	Steven S. Skidmore	M-04092003-SS	2702

7590

12/15/2004

Derek R. Van Gilder
916 Main St.
Bastrop, TX 78602

EXAMINER

LACYK, JOHN P

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,270

Applicant(s)

SKIDMORE ET AL.

Examiner

John P Lacyk

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/09/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 3736

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-4, 8-9, 13-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims all use the term “articulated”, however it is unclear what is actually meant by this term. Webster's Dictionary defines the term as –to unite by forming a joint. In looking at the claims it appears that the term is used as a means to provide more functions than forming a joint, it is unclear how being articulated would ease the insertion of the device or deter escape, engage the walls of the vagina, deter unwanted movement or travel of the device, it appears that the anal anchor, vaginal anchor and insertion shaft are merely connected together or “united by forming a joint” and it is unclear how the functional language is related to being articulated.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ritchie et al.

Ritchie et al discloses a device having an insertion shaft (60), an anal anchor (56) and a vaginal anchor (64) all attached to a base. The anal anchor has a circular point and a

Art Unit: 3736

circular base (see Figure 9), the circular point is blunted and the circular base has a rounded edge that would inherently hook onto the inside of an entry wall of the anal orifice. The rounded edge of the vaginal anchor would inherently engage the forward walls of the vagina when inserted. With regard to claims 19-20, while Ritchie et al does not specifically state that the device is dishwasher-safe, it is made from a glass-based material oxide of boron (Pyrex) and is resistant to heat which would make the device inherently dishwasher-safe since Pyrex is well known to be considered dishwasher-safe.

5. The information disclosure statement filed 4/09/2004 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because it fails to provide a date; also it is noted that the information disclosure statement lists a website, since the information on websites can change the document would have been considered only for the printed pages that were submitted. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

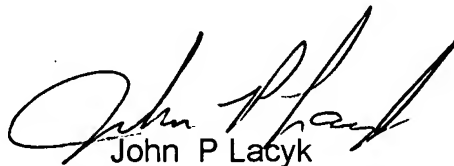
Art Unit: 3736

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jacobs, Kain and Sekulich are cited to further show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P Lacyk whose telephone number is 571-272-4728.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


John P Lacyk
Primary Examiner
Art Unit 3736

J.P. Lacyk